



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

June 15, 1973

The Honorable Dolph Briscoe  
Governor of the State of Texas  
State Capitol  
Austin, Texas 78711

Letter Advisory No. 51

Re: The constitutionality of  
House Bill 635 defining  
the jurisdiction of the  
County Court of Parker  
County and the jurisdiction  
of the 43rd District Court.

Dear Governor Briscoe:

You have submitted to us House Bill 635 enacted by the 63rd Legislature in its regular session, and now awaiting your action. This Bill has to do with the jurisdiction of the County Court of Parker County and the 43rd District Court.

The jurisdiction of county courts, generally, is provided in Article 5, Section 16, of the Constitution. They have original jurisdiction over all misdemeanors of which exclusive jurisdiction is not given to the justice court. They have exclusive jurisdiction in civil cases when the matter in controversy exceeds in value \$200 and does not exceed \$500 exclusive of interest. They have constitutional concurrent jurisdiction with the district courts when the matter in controversy exceeds \$500 and does not exceed \$1000 exclusive of interest but have no jurisdiction of suits for the recovery of land. They have appellate jurisdiction in civil and criminal cases in which justice courts have original jurisdiction, but in civil cases only when the judgment appealed from exceeds \$20 exclusive of costs. The county courts have the general jurisdiction of probate courts.

Section 22 of Article 5 provides:

"The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change."

In 1971 the Legislature adopted Article 1970a, (Acts 1971, 62nd Leg., p. 2814, Ch. 915) which increased the concurrent jurisdiction of certain county and district courts to \$5,000. However, it too is subject to repeal, in whole or in part, and, if House Bill 635 is valid, would be of no importance to this opinion.

In 1971 the Legislature adopted Article 1970-353 (Acts 1971, 62nd Legs., p. 1807, Ch. 535) by which the jurisdiction of the County Court of Parker County was diminished. The Court was to have no jurisdiction over matters of eminent domain, no original civil jurisdiction or original criminal jurisdiction of cases in which the punishment to be assessed included confinement in the county jail or with the Texas Department of Corrections; it was to continue as a probate court and was to have appellate jurisdiction over both civil and criminal matters. All civil causes, other than probate matters and all criminal causes in which the assessable punishment included confinement in the county jail or with the Texas Department of Corrections were made returnable to the 43rd District Court.

At the same time that the jurisdiction of the County Court of Parker County was diminished, the jurisdiction of the 43rd Judicial District, composed of Parker County, was increased (Acts 1971, 62nd Leg., p. 1806, Ch. 535). In addition to jurisdiction prescribed by the Constitution for district courts, the 43rd District Court was granted exclusive original jurisdiction in matters of eminent domain and original jurisdiction in all civil matters and causes exclusive of probate matters. It was to have original jurisdiction in all criminal matters and causes in which the assessable punishment included confinement in the county jail or with the Texas Department of Corrections.

House Bill 635 would amend these statutes in two respects: (1) It would restore certain jurisdiction to the County Court of Parker County giving it original and appellate civil jurisdiction, exclusive of matters of eminent domain, and original and appellate jurisdiction as normally exercised by county courts under the Constitution and general laws of the State, exclusive of eminent domain. Section 2 of the Act provides that the County Court of Parker County and the 43rd District Court would have "concurrent original civil jurisdiction" of causes of which the county court ordinarily would have original civil jurisdiction by general laws of the State, and over criminal matters of which the County Court of Parker County ordinarily would have original jurisdiction by general laws. In

other words, the 1973 Act would restore much of the original jurisdiction taken from the County Court by the Act of 1971.

To this point we find no difficulty with House Bill 635. Article 5 Section 22, would seem to authorize a local act. See Rogers v. Graves, 221 S. W. 2d 395 (Tex. Civ. App., Waco, 1949, no writ hist.). The fact of concurrent jurisdiction between the two courts creates no constitutional problem. They share concurrent jurisdiction under constitutional provisions. And Article 5, § 22, quoted above specifically grants the Legislature the right to increase, diminish or change the jurisdiction of the county courts.

However, House Bill 635, in § 2, then proceeds:

" . . . all such civil and criminal causes shall be filed with the District Clerk of Parker County in the district court. The judge of the 43rd District Court will be the presiding judge, insofar as the district court and county court are concerned in matters over which said courts exercise concurrent jurisdiction and may, in this discretion, assign to the county court of Parker County for trial and disposition, cases or portions thereof over which the concurrent jurisdiction is exercised by said courts . . . ."

The effect of this portion of the statute would be to make the 43rd District Court a senior court having supervisory powers over the County Court of Parker County. There is no constitutional provision authorizing such supervision and the courts of Texas have uniformly rejected it in the past. Ex parte Towles, 48 Tex. 413 (1877); Rains v. Reasonover, 102 S. W. 176 (Tex. Civ. App., 1907, err. ref'd.); Jones v. Kellogg, 140 S. W. 2d 592 (Tex. Civ. App., San Antonio, 1940, err. dis'm.).

We are aware that some such supervision by one district court over other district courts is authorized both by Constitution (Article 5, § 11) and by statute (Article 200a, the Administrative Judicial Districts Act). See Curry v. Dobbs, 10 S. W. 2d 438 (Tex. Civ. App., El Paso, 1928, no writ); Eucaline Medicine Co. v. Standard Inv. Co., 25 S. W. 2d 259 (Tex. Civ. App., Dallas, 1930, err. ref'd.).

In the last cited case the court said:

"The Legislature, drawing upon its reserve powers, has heretofore repeatedly imposed upon members of the judiciary duties other than those imposed by the Constitution, though not inconsistent therewith, as will be observed from a short review of legislation of this nature." (25 S. W. 2d at 261)

The court then reviewed a number of instances in which the Supreme Court as well as the district courts were given additional duties not specifically called for by the Constitution. It concluded:

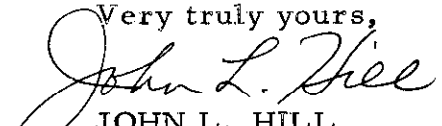
"The uniform legislative practice of conferring upon courts and judges duties, judicial in nature, other than regular constitutional duties, is tantamount to a legislative construction to the effect that the Constitution neither expressly nor impliedly prohibits this class of legislation . . . ." (25 S. W. 2d at 262)

We do not believe, however, that the legislative adding of additional duties to courts may constitutionally include granting one court supervisory power over another where there is no constitutional provision therefor.

It is our opinion, therefore, that, insofar as House Bill 635 of the 63rd Legislature would give to the 43rd District Court of Parker County overall supervision of the dockets of the County Court and allow it to assign to the County Court of Parker County a suit filed in the District Court, the proposed statute would be unconstitutional.

The Act contains no severability clause. Nevertheless, should the courts determine a partial unconstitutionality, it is our opinion that the remaining provisions can be given effect without the provisions giving the court supervision. Even if those were to be struck down, it is our opinion that the remaining portion would provide a valid statute if signed into law. Hatten v. City of Houston, 373 S. W. 2d 525 (Tex. Civ. App., Houston, 1963, err. ref'd., n. r. e.); Salas v. State, 365 S. W. 2d 174 (Tex. Crim. 1963); Gilder Bloom v. State, 272 S. W. 2d 106 (Tex. Crim. 1954); Delorme v. State, 488 S. W. 2d 808 (Tex. Crim. 1973).

Very truly yours,


  
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p. 46 Attorney General of Texas

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APPROVED:



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